The Builder.

No. CLVIII.

SATURDAY, FEBRUARY 14, 1846.

A VISIT to the Courts of Law, albeit tiresome and vexatious in the highest degree when kept there day after day, constrainedly in suspense, is not always useless to those connected with the matters to which our attention is more especially directed. During a forced loiter there last week, two or three questions were settled, of which a brief note may not be altogether uninteresting.

In the Common Pleas, on Tuesday, a case was decided which should serve as a warning to workmen and others, that negligence and want of care may entail pecuniary punishment, besides feelings of self-reproach. A publican at Woolwich having occasion to lower some sheets of lead from the top of a house, rolled them up and *threw them over* one at a time, merely saying "one, two, three, and away." One of these rolls fell upon Elizabeth Wales, a child of eleven years of age, and the consequence of the injury was paralysis of the left side. An action was brought to recover damages, and the jury awarded 120*l.*

In the same court, two days afterwards, the "smoke nuisance" came under consideration. Mr. Rich (plaintiff), the occupier of a house, No. 10, Palace-row, New-road, alleged that Mr. Easterfield (defendant), possessed two yards, whereon he had wrongfully and injuriously erected two shops, having two chimneys, near to his premises, and that he, lighting fires therein, had caused a great quantity of smoke to enter the plaintiff's house, whereby it became unhealthy, and much damaged in value. To this the defendant pleaded, first, not guilty; and, secondly, that at the time of the grievances complained of, the defendant was not possessed of the shops in question.

As this case involves a question of considerable importance to many persons, we avail ourselves of a report of the trial which afterwards appeared, and give the particulars at some length.

It appeared from the evidence, and by a model which was produced in court, that in front of the house, No. 12, in Palace-row, and consequently at no great distance from the premises of the plaintiff, one of the shops in question had been erected about the year 1841, and was, together with the adjoining premises, in March or April last, assigned to the defendant. Subsequently to this, the second of the shops alluded to was erected, and both on that and on the former shop the defendant caused a chimney to be placed. These chimneys were about 20 feet high, the shops being not more than 40 feet, and the house of the plaintiff consisted of three stories. The defendant had let these shops to two tenants, at 13*s.* per week; and it was whilst in their possession, and not before, that the nuisance complained of existed; and it appeared in the course of the trial, that during nine months only half a ton of coals had been used in them, coke having been principally consumed. Two witnesses, however, were called, who proved that since the erection and use of the chimneys, and never before, there had been a very great difference in the enjoyment of the plaintiff's house. That when the wind was from a particular quarter no one could sit in the drawing-room on the first floor, whilst the windows were open, from the quantity of smoke and blacks admitted. It was also further proved by one witness that the premises, in consequence, had become deteriorated in value to the extent of from 15*l.* to 20*l.* a year. Numerous other chimneys of a somewhat similar description, it was stated, were in the immediate neighbourhood, and that the plaintiff himself had several on his premises at the back of his house, and one of them connected with a ten-horse power steam-engine. The plaintiff's house had been built for more than twenty years before the erection of the chimneys.

Mr. Serjeant Byles and Mr. Wordsworth for the defendant, submitted that the plaintiff should be non-suited. The declaration alleged that the nuisance had taken place during the possession of the shops by the defendant; and the evidence was that they were then occupied by tenants to whom they had been let, and if any one was liable the tenants were, who alone caused the smoke. Another objection was, that every man had a right, at common law, to have chimneys on his house; and, by their means, was perfectly free to use the atmosphere for domestic purposes. The other side contended, that it must be taken as clear that the shops in question had been let for the purpose of being used in the ordinary way, and that, therefore, the defendant was responsible for the acts of his tenants. The defendant's common law right to use his chimneys must be limited to a reasonable use, without causing an injury to the property of his neighbour.

Mr. Justice Erle said that both points should be reserved for the opinion of the full court, and proceeded to sum up the case to the jury. The law was clear that no man had a right to use his property so as to injure the property of his neighbour; but there was also an equally clear legal principle, that a man may make a reasonable use of his own rights of property in a convenient place, though it be to the detriment of his neighbour. In the present case the comfort of the plaintiff's house appeared to have been interfered with, and its value lowered; still no action would lie for that injury if it proceeded from a reasonable use on the part of the defendant in a convenient place. There were many parts of the metropolis where various offensive trades were carried on, and there it would not avail for one tradesman to say to another, your business is offensive; but if a trade of such a description were set up in a different place, a jury would no doubt say it was a nuisance. The attention of the jury in the present case must, therefore, be directed to the question of whether, in their opinion, the defendant had done no more than the adjoining owners of similar properties had done when exercising their reasonable rights in a convenient place. Contemplating the *locus* of the properties, as it appeared from the model and the evidence before them, it would be for the jury to say whether the defendant had done more than exercise a reasonable right in a convenient place, and if they thought that he had, and that the plaintiff had sustained substantial and not mere fanciful damage, then their verdict should be for the plaintiff; if of a contrary opinion, they should find for the defendant.

The jury retired, and after an absence of some time returned into court with a verdict for the plaintiff—Damages, 40*s.* and costs 40*s.*

While this trial was going in the Common Pleas, they were engaged in the Court of Exchequer in deciding that a man should not give his assent to an encroachment on his property to-day, and (having allowed the applicant to act upon that assent) withdraw it the next, and require the work to be undone.

The plaintiff and defendant were next door neighbours, living respectively at 22 and 21, Shaftesbury-terrace, Pimlico. In August, 1844, the defendant put up a new front to his shop, and extended the corner of the entablature three or four inches over the plaintiff's house, an occurrence not uncommon. Before all the alterations were completed, the plaintiff complained of the encroachment, but nothing more was done till September, 1845, when the plaintiff renewing his complaints, the defendant proceeded to remove the projection, and had partially done so, when the plaintiff's attorney called with a writ. The defendant then said that he was about to remove the encroachment, and would satisfy the plaintiff, but if a writ were sued out against him, he would "have it out." The writ was not then served, but was served a month subsequently, on his doing nothing more towards the removal of the cause of complaint.

The defendant, who began, proved that before he made the alteration, the plaintiff consented to it. The plaintiff's counsel then called evidence, which only went to shew that he subsequently complained of the alteration, but did not negative the direct evidence on the part of the defendant.

The Lord Chief Baron left it to the jury to say whether they believed the evidence for the defendant, for if so they should find for him. The plaintiff might have revoked his licence to make the alteration, but there was no part of the pleading to meet that state of facts. Upon the present state of the pleadings, if he once assented to this trespass, the jury should find for the defendant, and for the defendant they accordingly did find.

Walking out of the court into one of the railway committee rooms in the cloisters (the North Staffordshire Railway), we found the excellent official referee, Professor Hosking, Mr. Tite, Mr. Stephenson, Mr. Vignolles, and a dozen others endeavouring to settle the precise meaning of the word "soffit," as applied to an arch. A petitioner against the bill, objected to a measurement on the plans and sections, which was given as taken from the "soffit" of an arch; this, he contended, was an incorrect description, as the "soffit" meant the whole of an under surface, either of an arch or flat flooring, and not any one given point. The measurement should have been given as taken from the "crown of the arch." He submitted therefore, that the plans and sections were not correct in this particular and he quoted works on architecture, and called witnesses in support of his objection. Mr. Tite and Mr. Hosking both stated that by "soffit" they understood the whole of the interior surface of an arch from springing to springing, and not the top or crown. One said, that with such a point given to him he should consider himself at liberty to take the measurement for the *datum* line, from any part of the interior surface of the arch, and that, therefore, this was a fluctuating and not a fixed point. On cross-examination, most of the witnesses admitted, that from this word being used in reference to a level, they might probably suppose it meant the top of the arch.

In support of the bill, Mr. Rendell contended, that among practical engineers the word "soffit" was always taken to mean the apex of the intrados, and that the use of the word "soffit" in general was sufficient to describe the head way in navigation. The witness observed, that among practical engineer